

BR

**AUGUST 21, 2008**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

United States of America ex rel.

ESTEBAN RUIZ, PRISON NO. #R-46140

(Full name and prison number)

(Include name under which convicted)

PETITIONER

vs.

08CV 4582

JUDGE PALLMEYER

MAGISTRATE JUDGE DENLOW

JENNIFER STOUDT, ACTING WARDEN(Warden, Superintendent, or authorized  
person having custody of petitioner)

RESPONDENT, and

(Fill in the following blank only if judgment  
attacked imposes a sentence to commence  
in the future)

ATTORNEY GENERAL OF THE STATE OF

ILLINOIS, HONORABLE LISA M. MADIGAN

(State where judgment entered)

RECEIVED  
AUG 13 2008 LCW  
AUG 13 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case Number of State Court Conviction:

02-CR-24502

## PETITION FOR WRIT OF HABEAS CORPUS -- PERSON IN STATE CUSTODY

1. Name and location of court where conviction entered: CIRCUIT COURT OF COOK COUNTY, FIRST  
MUNICIPAL DISTRICT, CRIMINAL DIVISION, THOMAS SUMNER, JUDGE PRESIDING.2. Date of judgment of conviction: PETITIONER/DEFENDANT WAS SENTENCED ON AUGUST 18, 2005.

3. Offense(s) of which petitioner was convicted (list all counts with indictment numbers, if known)

PETITIONER/DEFENDANT WAS INDICTED FOR THREE COUNTS OF RECKLESS HOMICIDE AND SIX COUNTS  
OF AGGRAVATED DRIVING UNDER THE INFLUENCE. ALL CHARGES WERE NOLLE PROSSED EXCEPT FOR ONE  
4. Sentence(s) imposed: COUNT OF RECKLESS HOMICIDE. 10 YEARS INCARCERATION.

5. What was your plea? (Check one)

(A) Not guilty ( ☒ )(B) Guilty ( ☐ )(C) Nolo contendere ( ☐ )

If you pleaded guilty to one count or indictment and not guilty to another count or indictment, give details:

N/A

**PART I -- TRIAL AND DIRECT REVIEW**

1. Kind of trial: (Check one): Jury ( ☒ ) Judge only ( )
2. Did you testify at trial? YES ( ☒ ) NO ( )
3. Did you appeal from the conviction or the sentence imposed? YES ( ☒ ) NO ( )

(A) If you appealed, give the

- (1) Name of court: (APPEAL NO.1-05-2883)  
APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT.
- (2) Result: THE CIRCUIT COURT'S RULING WAS AFFIRMED.
- (3) Date of ruling: MARCH 30, 2007.
- (4) Issues raised: 1. INEFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS OF LAW  
VIOLATION, AND EQUAL PROTECTION OF LAW VIOLATION.

(B) If you did not appeal, explain briefly why not:

I DID FILE AN APPEAL

4. Did you appeal, or seek leave to appeal, to the highest state court? YES ( ☒ ) NO ( )

(A) If yes, give the

- (1) Result MY PETITION FOR LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT WAS DENIED OF MAY 29, 2008. (NO. 104484)
- (2) Date of ruling: MAY 29, 2008.
- (3) Issues raised: FEDERAL AND STATE VIOLATIONS AS FOLLOWS: INEFFECTIVE ASSISTANCE OF COUNSEL, EQUAL PROTECTION OF LAW AND DUE PROCESS OF LAW.

(B) If no, why not: N/A

5. Did you petition the United States Supreme Court for a writ of *certiorari*? Yes ( ) No ( ☒ )

If yes, give (A) date of petition: \_\_\_\_\_ (B) date *certiorari* was denied: \_\_\_\_\_

**PART II -- COLLATERAL PROCEEDINGS**

1. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES ( ) NO (x)

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):

- A. Name of court: \_\_\_\_\_
- B. Date of filing: \_\_\_\_\_ N/A \_\_\_\_\_
- C. Issues raised: \_\_\_\_\_ N/A \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- D. Did you receive an evidentiary hearing on your petition? YES ( ) NO (x)
- E. What was the court's ruling? \_\_\_\_\_ N/A \_\_\_\_\_
- F. Date of court's ruling: \_\_\_\_\_ N/A \_\_\_\_\_
- G. Did you appeal from the ruling on your petition? YES ( ) NO (x)
- H. (a) If yes, (1) what was the result? \_\_\_\_\_ N/A \_\_\_\_\_  
 (2) date of decision: \_\_\_\_\_ N/A \_\_\_\_\_  
 (b) If no, explain briefly why not: \_\_\_\_\_ N/A \_\_\_\_\_
- I. Did you appeal, or seek leave to appeal this decision to the highest state court?  
 YES ( ) NO (x)
- (a) If yes, (1) what was the result? \_\_\_\_\_ N/A \_\_\_\_\_  
 (2) date of decision: \_\_\_\_\_ N/A \_\_\_\_\_  
 (b) If no, explain briefly why not: \_\_\_\_\_ N/A \_\_\_\_\_

2. With respect to this conviction or sentence, have you filed a petition in a **state court** using any other form of post conviction procedure, such as *coram nobis* or habeas corpus? YES ( ) NO (X)

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

1. Nature of proceeding N/A
2. Date petition filed N/A
3. Ruling on the petition N/A
3. Date of ruling N/A
4. If you appealed, what was the ruling on appeal? N/A
5. Date of ruling on appeal N/A
6. If there was a further appeal, what was the ruling? N/A
7. Date of ruling on appeal N/A

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in **federal court**? YES ( ) NO (X)

A. If yes, give name of court, case title and case number: N/A

B. Did the court rule on your petition? If so, state

- (1) Ruling: N/A
- (2) Date: N/A

4. **WITH RESPECT TO THIS CONVICTION OR SENTENCE, ARE THERE LEGAL PROCEEDINGS PENDING IN ANY COURT, OTHER THAN THIS PETITION?**

YES ( ) NO (X)

If yes, explain: N/A

**PART III -- PETITIONER'S CLAIMS**

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

**BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.**

(A) Ground one \_\_\_\_\_

Supporting facts (tell your story briefly without citing cases or law): \_\_\_\_\_

**THAT PETITIONER ASSERTS HIS UNITED STATES CONSTITUTIONAL PRIVILEGES GUARANTEED UNDER THE FOURTEENTH AMENDMENT ("DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW") WERE VIOLATED, WHEN THE ILLINOIS COURTS ERRED IN ADDRESSING HIS CLAIM THAT ILLINOIS STATUTE 720 ILCS 5/9-3(C)(1), OF THE RECKLESS HOMICIDE STATUTE VIOLATED THE "DUE PROCESS AND EQUAL PROTECTION" CLAUSE BECAUSE (SAID) STATUTE LACKS A RATIONAL BASIS WHEN COMPARED WITH STATUTE/SECTION 625 ILCS 11-501(A), OF THE DRIVING UNDER THE INFLUENCE STATUTE, MOREOVER, THESE SAME COURTS ERRED BY NOT PLACING THE BURDEN OF PROOF THEIR ERROR WAS NOT HARMLESS OF THE PETITIONER, AND THEY FAILED TO ADDRESS THE UNITED STATES SUPREME COURT PRECEDENT THAT A HARMLESS ERROR ANALYSIS WAS NOT AVAILABLE IN THIS CAUSE.**

**(READ HOLMES V. SOUTH CAROLINA, 126 S.CT. 1727 (2006)).**

(B) Ground two \_\_\_\_\_

Supporting facts: \_\_\_\_\_

**THAT PETITIONER ASSERTS HIS UNITED STATES CONSTITUTIONAL PRIVILEGES GUARANTEED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS ("EFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS OF LAW") WERE VIOLATED WHEN HE WAS DENIED THE RIGHT TO PROCEED TO TRIAL WITH A COUNSEL OF HIS CHOICE, AND WHEN THE ILLINOIS SUPREME COURT DECLARED, THAT THE UNITED STATE'S SUPREME COURT DECISION UNITED STATES V. GONZALEZ-LOPEZ, 126 S. CT. 2557, 2564, IS TO BE READ "SO BROADLY, AS TO ACCORD THE TRIAL COURT WHAT APPEARS TO BE SUCH AN UNLIMITED DISCRETION TO CONTROL ITS CALENDAR THAT IT RENDERS A PETITIONER/DEFENDANT'S CONSTITUTIONAL RIGHT TO COUNSEL OF CHOICE MEANINGLESS".**

(C) Ground three \_\_\_\_\_  
Supporting facts: \_\_\_\_\_

THAT PETITIONER ASSERTS THAT HIS UNITED STATES CONSTITUTIONAL PRIVILEGES GUARANTEED UNDER THE FOURTEENTH AMENDMENT ("DUE PROCESS OF LAW") WAS VIOLATED BECAUSE ILLINOIS STATUTE 720 ILCS 5/9-3(C)(1), CREATES A MANDATORY PRESUMPTION IN LIGHT OF COUNTY COURT V. ALLEN, 99 S.CT. 2213 (1979). THE ILLINOIS COURTS RELIED ON AUTHORITY THAT WAS NOT CONTROLLING INSTEAD OF AUTHORITY THAT WAS CONTROLLING.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(D) Ground four \_\_\_\_\_  
Supporting facts: \_\_\_\_\_

2 Have all grounds raised in this petition been presented to the highest court having jurisdiction?  
YES (X) NO ( )

3. If you answered "NO" to question (16), state briefly what grounds were not so presented and why not:

\_\_\_\_\_

\_\_\_\_\_

**PART IV -- REPRESENTATION**

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing ATTORNEY FELDMAN
- (B) At arraignment and plea SHELLY - RETIRED & RAMOND L. PRUSAK
- (C) At trial ATTORNEYS  
SANTANA - SOTOMAYOR AND MERCEDES JAILE
- (D) At sentencing " " "
- (E) On appeal DAVID P. WIENER AND JAMES N. PERLMAN
- (F) In any post-conviction proceeding N/A
- (G) Other (state): N/A

**PART V -- FUTURE SENTENCE**

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES ( ) NO ( ☒ )

Name and location of the court which imposed the sentence: N/A

Date and length of sentence to be served in the future N/A

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

*E. H. Davis*  
(Signature of petitioner)

\_\_\_\_\_  
(I.D. Number)

\_\_\_\_\_  
(Address)

REVISED 01/01/2001

2268 E. MORTON AVENUE  
JACKSONVILLE, FL 32250

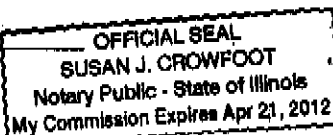
**AFFIDAVIT**

I, ESTEBAN RUIZ, being duly sworn do repose and state that the attached HABEAS CORPUS PETITION is true and correct in substance and fact to the best of my knowledge. (FEDERAL).

Subscribed and sworn to before me this  
6th day of August, 2008.

Susan J. Crowfoot  
Notary Public

4-21-2012  
Expiration of Commission



/s/ Esteban Ruiz  
Petitioner

# R-46140  
JACKSONVILLE Correctional Center  
~~Box~~ 2268 EAST MORTON AVENUE  
JACKSONVILLE, Illinois 62650

**NOTICE OF FILING**

CLERK OF THE COURT  
TO: MICHAEL W. DOBBINS  
U.S. DISTRICT COURT, NORTHERN  
DISTRICT, EASTERN DIVISION  
219 SOUTH DEARBORN STREET  
CHGO. IL 60604

TO: \_\_\_\_\_ TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1-ORIGINAL COPY & TWO OTHER  
COPIES.

Please take notice on AUGUST 6, 2008, I filed with MICHAEL W. DOBBINS - CLERK  
U.S. NORTHERN DISTRICT FEDERAL Court the attached HABEAS CORPUS  
copy(ies) of which are served on you. PETITION

/s/ Esteban Ruiz

**AFFIDAVIT OF SERVICE**

STATE OF ILLINOIS, )  
 )  
COUNTY OF MORGAN )

I, ESTEBAN RUIZ, being sworn state that I served the attached notice on the above named person(s) by placing a true and correct copy in an envelope(s), addressed as shown above, with the proper U.S. postage on each and deposited the envelope(s) in the U.S. Mail at JACKSONVILLE, Illinois, 62650, on or about the hour of \_\_\_\_\_ on AUGUST 6, 2008.

/s/ Esteban Ruiz